

# Program Evaluation Report

New York's Base Drinking Water State Revolving Fund  
Program Activities During FFY 2015

7/6/2016

Prepared by the State Revolving Fund Program Section



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## I Introduction

The Drinking Water State Revolving Fund (DWSRF) Base Program was authorized by the Safe Drinking Water Act (SDWA) of 1996 to provide capitalization grants to the States and the Commonwealth of Puerto Rico to finance the costs of infrastructure projects needed to achieve or maintain compliance with SDWA requirements. In addition to financing infrastructure projects, States are authorized to set aside a portion of their capitalization grant to fund a range of activities including program administration, source water protection and capacity development. Each State has considerable flexibility in determining the design of its program and in directing funding towards its most pressing compliance and public health needs; however, this flexibility must always be conducted within the SDWA and the framework of underlying program requirements.

The U.S. Environmental Protection Agency (EPA) Region 2 oversight of the DWSRF programs assesses each state's performance and compliance with statutes, regulations, the operating agreement (OA), and the grant conditions governing DWSRF programs. The oversight is accomplished via a continuous process of review and evaluation of key program elements. The review process includes examination of project files, program elements and transaction testing during on-site reviews conducted at state offices. The culmination of the review process is the Program Evaluation Report (PER). This PER summarizes the results of Region 2's review of the New York State Department of Health's implementation of the DWSRF base program during Federal Fiscal Year 2015. The on-site project file review was conducted February 1 through 3, 2015 and transaction testing was conducted on June 6 through 9, 2015.

## II Program Background

The New York State Drinking Water State Revolving Fund program is jointly administered by the New York State Department of Health (NYSDOH) and the New York State Environmental Facilities Corporation (NYSEFC). The NYSDOH is the DWSRF EPA grant recipient and oversees the technical aspects of the program, while NYSEFC administers the financial operations of the program.

The DWSRF Base program requires the State to provide a 20% match of the Federal capitalization grant amount along with a one to one match of the program management set-aside. The Federal and State funds are leveraged each year, which enables the State to provide assistance to more projects. Leveraging has proved to be a powerful tool for New York, resulting in funds disbursed for project assistance totaling 329% (\$3.77 billion) of the cumulative Federal capitalization grant amounts (\$1.14 billion<sup>1</sup>) as of June 1, 2016. This amount includes \$1.02 billion in assistance to disadvantaged communities. New York State has a greater need for water infrastructure investment than almost every other state. In the most recent Drinking Water Needs Survey and Assessment, dated February 2011, it was estimated that \$24 billion will be needed in New York to ensure the delivery of safe drinking water through 2031. A significant disparity exists between the projects needing funding and projects seeking funding, whether through the SRF program or from other sources.

On September 16, 2015, EPA awarded the NYSDOH \$42,176,800 in Federal Fiscal Year (FFY) 2015 base program funds. Previously, on September 24, 2014, EPA awarded the NYSDOH \$42,455,000 in FFY 2014 base program funds. Also for FFY 2014, NYSDOH was awarded \$56,572,914 in Disaster Relief Appropriations Act Funds. This Program Evaluation Report (PER) summarizes the results of Region 2's review of the NYSDOH's implementation of the DWSRF base program during FFY 2015. The on-site project file review was conducted February 1 through 3, 2015 and transaction testing was conducted on June 7, 2016.

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<sup>1</sup> Does not include Disaster Relief Appropriation Act capitalization grant amount of \$56,572,914.

### III Scope of Review

In order to accurately report on program performance familiarity should be maintained with the following reporting and documentation time periods that are referenced within the PER:

Reporting Year/Document	Start Date	End Date
Federal Fiscal Year 2015	October 1, 2014	September 30, 2015
State Fiscal Year 2015	April 1, 2014	March 30, 2015
NIMS Reporting Year 2015	July 1, 2014	June 30, 2015
Biennial Report FFY 2014-2015	October 1, 2013	September 30, 2015
Final Intended Use Plan FFY 2015	October 1, 2014	September 30, 2015

#### Programmatic Review Process

During the weeks preceding the on-site review, Region 2 staff reviewed supporting documentation and partially completed the programmatic and project file review checklists. During the on-site review, Region 2 staff examined two base program project files and completed the project file review checklists. Interviews were conducted with state staff and the programmatic review checklist was partially completed. After the on-site review a list of follow up items was sent to state staff and answers were sent back to Region 2 in a timely manner.

#### Documents Reviewed

- Grant Agreement #FS-99290515-0
- Intended Use Plan, FFY 2015
- Biennial Report, FFY 2014-2015
- Set Aside Workplan, FFY 2015
- Set Aside Workplan, FFY 2014
- Performance Status Report, FFY 2015
- DWSRF NIMS
- PBR Database Reports
- COMPASS Reports
- Independent Audit Reports
- NYS SERP Documentation
- State Project Files

#### Participating Regional Staff

The table below lists EPA Region 2 staff members who participated in the on-site review on March 9, 2014. On-site transaction testing was conducted by Nancy Chong of EPA Region 2 on June 7 2016.

U.S. EPA Region 2	Title	Role in On-Site Review
Stephen Vida, P.E.	State Revolving Fund Program Section Chief	Conducted entrance/exit conference and assisted with on-site review preparation.
Daniel D'Agostino	DWSRF Coordinator	Conducted project file review, programmatic review.
Nancy Chong	Financial Analyst	Transaction testing

#### State Staff Interviewed

Representatives from the New York State Department of Health and the New York State Environmental Facilities Corporation were interviewed and consulted during the on-site review process. The following is a list of state staff interviewed and their titles at their respective agencies:

New York State Department of Health	Title
Michael Montysko, P.E.	Chief, Design Section
Brock Rogers, P.E.	Design Section

New York State Environmental Facilities Corporation	Title
Timothy P. Burns, P.E.	Director, Division of Engineering and Program Management
David S. Bradley, P.E.	Deputy Director, Division of Engineering and Program Management

## IV Funding Sources and Uses

### Funding Sources

The FFY 2015 capitalization grant for the DWSRF program in NYS was awarded to the NYSDOH on September 16, 2015 for \$42,176,000. A state receiving a DWSRF Base program grant is required to contribute a 20% match using state funds. Additionally, there is a required 1:1 match of the Program Management set aside. The table below lists the federal grant amounts, state match amounts (20% and 1:1 Program Management), and total 2015 funding amounts:

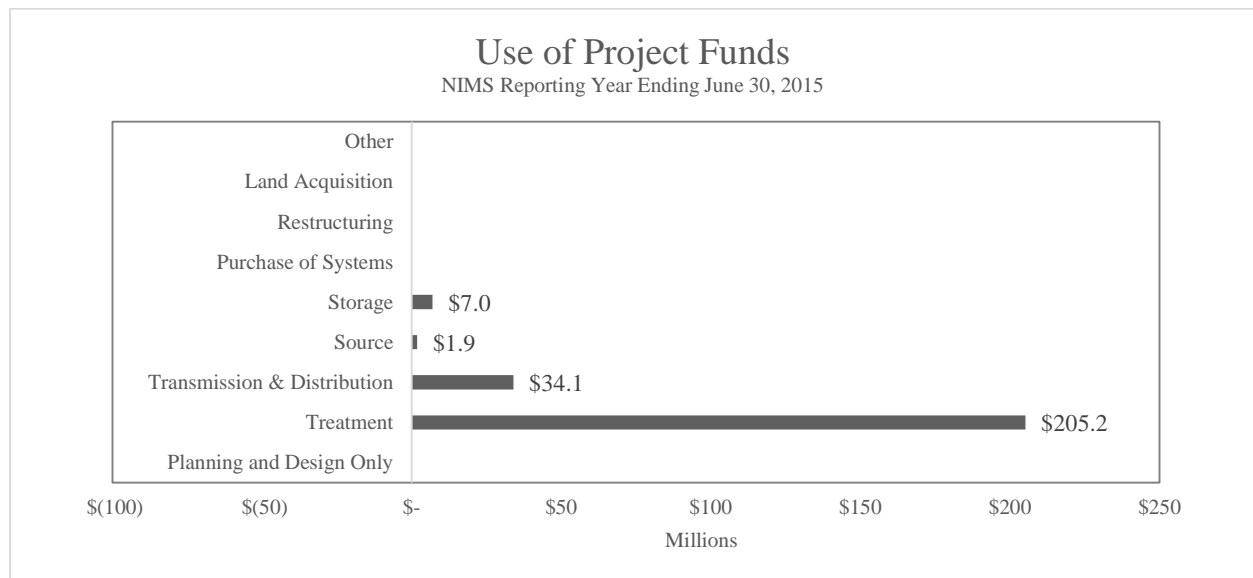
2015 Federal Capitalization Grant Amount	2015 20% State Match	2015 1:1 Program Management State Match	2015 Total Program Funding
\$42,176,000	\$12,652,800	\$4,217,600	\$59,046,400

The State provided a 20% matching share of \$12,652,800 as required by the SDWA. Also provided was the 1:1 program management set aside of \$4,217,000. The FFY 2015 project fund amount totaled \$48,080,640 and set-aside funds totaled \$10,965,760. Out of a possible 31%, a total of % 16 of the 2015 capitalization grant was reserved for set-asides with the remainder being used for projects:

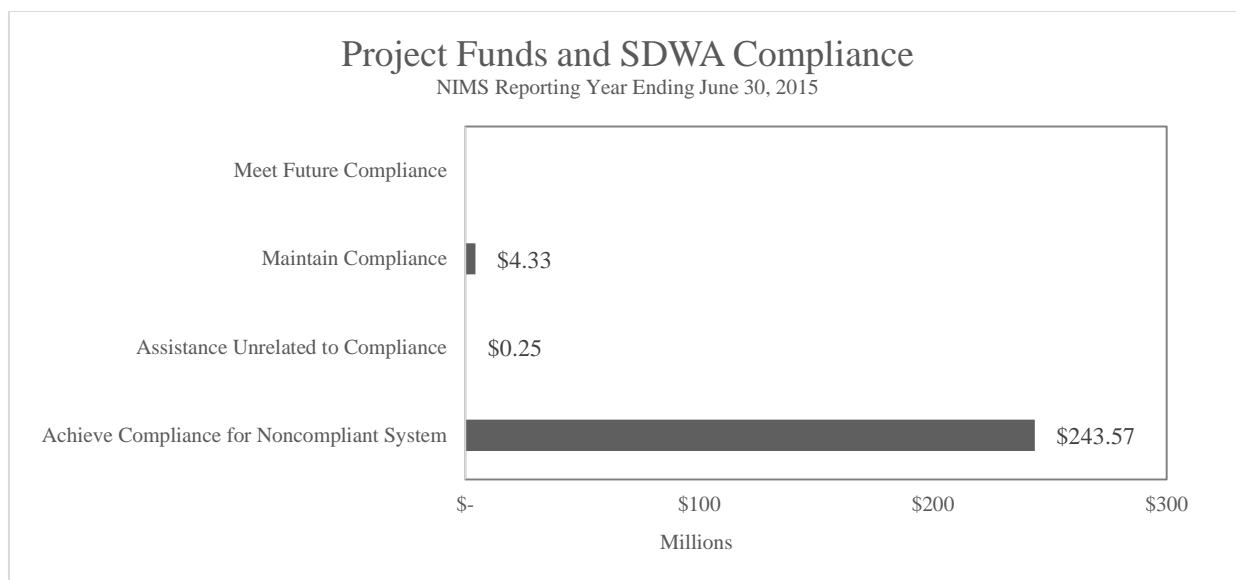
Funding Source	2015 Project Funds	2015 Set-Aside Funds	2015 Total Funds
Federal	\$35,427,840	\$6,748,160	\$42,176,000
State	\$12,652,800	\$4,217,600	\$16,870,400
Combined	\$48,080,640	\$10,965,760	\$59,046,400

### Funding Uses: Projects

In total for NIMS reporting year 2015, a total of \$248,146,959 in DWSRF funds were directed toward project use. Funding for these projects came from a variety of sources, including repayments. There was no financing of any non-construction projects. The bar chart below shows the distribution of funds expended during NIMS reporting year 2015 across all construction categories. The chart demonstrates that most of the DWSRF funding was directed towards treatment projects. Treatment projects receive more points during the project ranking process because they restore or maintain compliance with the regulatory standards of the Safe Drinking Water Act (SDWA).



As stated previously, priority is given to projects that are not in compliance with the regulatory standards of the Safe Drinking Water Act (SDWA). Funds are expended to restore these systems to a state of compliance. The graph below shows how spending is directed to projects in need of correction to restore or achieve present compliance:



### Funding Uses: Set-Asides

New York used \$6,748,160 from the 2015 capitalization grant to fund DWSRF set-asides. With the 1:1 Program Management set-aside match included, total set-aside funding for FFY 2015 was \$10,965,760. This included Administration, Small Systems Technical Assistance, and Program Management. The following table shows this distribution of set-aside funds:

2015 Total Set-Aside Funding	Administration (4%)	Technical Assistance (2%)	Program Management (10% + 1:1 Match)
\$10,965,760	\$1,687,040	\$843,520	\$8,435,200

In relation to what set-asides are available to New York under the DWSRF program, the State is utilizing the maximum amounts in all but one category. NYSDOH took the full share of the 4% administrative funding set-aside, the 2% Small Systems Technical Assistance set-aside and the 10% program management set-aside. The state elected to not use any of the 15% set-aside for Local Assistance & Other State Programs. Overall New York used 16% of the available 31% that is allowed for set-aside use.

## V Programmatic Observations

### Operating Agreement

The Operating Agreement (OA) and its attachments serve as a contract between EPA and NYS for the operation of the DWSRF program. The existing OA was signed on September 30, 1997 and has not been updated since the inception of the program. EPA, NYSDOH and NYSEFC will continually evaluate the current OA and determine what updates are required in a mutually agreed upon manner.

### 2015 Final Intended Use Plan

The Intended Use Plan (IUP) is an annual utilization plan which describes goals, funding policies, and management of the DWSRF program. The IUP also describes program changes and initiatives, long and short-term goals, financial status, amendment processes, set-aside activities, the disadvantaged community program and hardship, capacity assessment, and the state environmental review process. The IUP also contains project priority lists. The final Intended Use Plan (IUP) for FFY 2015 was issued on October 1, 2014. Six amendments were also issued, with the last of these publically issued on September 9, 2015. The amendments to the 2015 Final Intended Use Plan typically contain modifications to the costs associated with projects on the project priority list.

The project readiness list contained in the IUP list projects that may be funded within FFY 2015. The Project Annual List (formerly Readiness List) lists all projects for which the assistance recipient has submitted all required pre-construction technical documents to the NYSDOH or have completed construction. The subset of projects that are above the subsidized funding line on the Project Annual List are expected to receive funding during this IUP cycle

and comprise the Funding List. Other lists in the IUP include the “Category A” list of projects serving less than 10,000 people, and a “Category C (Hardship)” list of projects serving disadvantaged communities. The “Category B” list of projects serving greater than 10,000 people was not included in this IUP as a separate list. The IUP also includes the Multi-Year list which consists of projects where listing forms were submitted and reviewed. Prior to ranking, the applicants are sorted by population size into lists as described above. This ensures that New York meets the 15% small system requirement. Within these lists, the NYSDOH awards the most points to systems that have the most significant compliance issues. If a project has an executed financing agreement and more funding is required for completion, it will receive significant bonus points. This ensures the completion of all projects. Project lists typically include a short description, project costs, description of financing, points received in ranking, and population served. New York State’s IUP scores and ranks projects consistent with its approved priority system.

Project bypass can occur in special conditions. For example, bypass can occur if a project does not progress as expected, or if an applicant does not submit a full application for a project after it has been above the subsidized funding line for two or more consecutive IUP periods. Funds made available through project bypass may be used for emergency financing to address imminent threats to public health, or to finance costs increases to projects above the subsidized funding line.

#### **2014-2015 Biennial Report**

As per 40 CFR 35.3550(n), “Biennial Report”, a State must agree to complete and submit a Biennial Report that describes how it has met the goals and objectives of the previous two fiscal years as stated in the IUPs and capitalization grant agreement. The State must submit biennial reports to Region 2’s Regional Administrator according to the schedule established in the capitalization grant agreement. The NYSDOH submitted its biennial report covering program activities during FFY 2014 and FFY 2015 on June 23, 2016. This report contained all required elements and is of high quality.

#### **DWSRF Administration**

Current staff manage the program with a very high level of professionalism and success. Due to current state budgets, the NYSDOH is not able to hire new employees. As in the past, the NYSDOH has been able to maintain program operations through the training of existing employees.

#### **Compliance with Environmental Review Requirements**

During FFY 2015, New York State maintained compliance with National Environmental Policy Act (NEPA) requirements by ensuring that projects funded under the DWSRF program are all subject to the State Environmental Quality Review (SEQR) process. During FFY 2015, the State consulted with EPA Headquarters which confirmed that New York State’s SEQR process meets the National Environmental Policy Act-like standard.

In implementing the SEQR process in New York State, an action (project) is subject to review under SEQR if any state or local agency has authority to issue a discretionary permit, license or other type of approval for that action. SEQR also applies if an agency funds or directly undertakes a project, or adopts a resource management plan, rule or policy that affects the environment. The assistance recipient may declare itself in writing as the “lead agency.” Other state or local agencies are permitted to object to the “lead agency” declaration. If there are no objections or responses within 30 days, the lead agency designation is confirmed. Under SEQR the lead agency determines whether the action is a Type I, Type II or Unlisted Action. Type II actions receive the equivalent of a “categorical exclusion.” Type I and Unlisted actions require that the lead agency complete an Environmental Assessment Form (EAF). This form assists the lead agency’s engineer to analyze and quantify all of the various impacts a project may have. If the engineer determines that there will be significant impacts, an Environmental Impact Statement will be required. If there are no significant impacts, the lead agency issues a “negative declaration”. Determinations are published online in the Environmental News Bulletin<sup>2</sup> (ENB) for public comment. The ENB serves as a running record of all SERP decisions made in New York State. The ENB entries for each project include a contact for the project and a time window when comments can be submitted.

*Appendix A contains a New York State Environmental Quality Review (SEQR) Process Diagram.*

#### **Compliance with Federal Cross-Cutting Authorities**

Compliance with Federal Cross-Cutters is closely linked with the SEQR process. The full Environmental Assessment Form (EAF) form includes an evaluation of the Federal Cross-Cutters which is used by the “Lead Agency” to determine applicability and compliance. Letters are collected as required from involved New York State and Federal

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<sup>2</sup> The ENB can be accessed at <http://www.dec.ny.gov/enb/enb.html>.

agencies. The State is able to effectively work with EPA and has utilized formal consultations to resolve cross-cutter issues. On February 19, 2015, NYSDOH and NYSEFC sent EPA a letter outlining the Sole Source Aquifer review process. EPA affirmed the review process.

DWSRF recipients and their contractors are required to comply with DBE requirements through use of the DWSRF bid packet; project financing agreement; and grant agreement. Administrative conditions of the Award includes requirement for NYSDOH/NYSEFC to comply with 40CFR, Section 33.301. The condition requires DOH/EFC to comply with six good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply. DOH/EFC bid documents include DBE requirements. The bid packet provides DBE forms 6100-2, 3 and 4. The NYSDOH fully complies with DBE requirements. In order for payment to be made to a contractor, the assistance recipient must affirm that DBE and EEO requirements are being satisfied.

### **Funding Eligibility**

Listing forms and project applications are reviewed for project eligibility before funds are awarded. Multiple layers of eligibility review are conducted by the state regarding engineering reports, plans and specifications. Assistance recipients must sign a re-certification that all costs are eligible. Invoices are reviewed to determine eligibility or project costs. The two projects that were reviewed by EPA Region 2 were eligible for funding. The \$2,961,160.18 examined under transaction testing (13 transactions) contained only eligible costs. There were no improper payments. Otherwise eligible projects classified as priority systems based on EPA's Enforcement Targeting Tool (ETT) are not eligible for funding unless the proposed project will ensure capacity or compliance.

### **Additional Subsidization Requirement**

For FFY 2015, the requirements were such that a minimum of 20% and a maximum of 30% of the capitalization grant must be used to provide additional subsidy to eligible assistance recipients. States may comply with this requirement by offering subsidy in the form of negative interest rate loans, principal forgiveness, and/or grants to assistance recipients experiencing economic hardship.

As of June 6, 2016, New York has two projects totaling \$1,390,114 in additional subsidization funds in the PBR system assigned to the FFY 2015 capitalization grant. New York has met the additional subsidization requirement for the FFY 2014 and FFY 2013 capitalization grants and is expected to meet this requirement for the FFY 2015 capitalization grant. The NYSDOH is encouraged to keep the PBR as up to date as possible to ensure accurate reporting of program results.

Federal Fiscal Year	Federal Capitalization Grant Amount	Minimum Additional Subsidization	Maximum Additional Subsidization	NYSDOH Additional Subsidization <sup>3</sup>	Number of Projects
2015	\$42,176,000	\$8,435,200 (20%)	\$12,652,800 (30%)	\$3,390,114 (8%)	2
2014	\$42,455,000	\$8,491,000 (20%)	\$12,736,500 (30%)	\$8,491,000 (20%)	7
2013	\$55,485,000	\$11,097,000 (20%)	\$16,645,500 (30%)	\$11,160,739 (20%)	7

*Appendix B contains PBR reports for additional subsidization projects financed under the FFY 2015, 2014, and 2013 capitalization grants.*

### **Assistance Provided to Small Systems**

Each year the NYSDOH exceeds the minimum programmatic requirement to provide 15% of capitalization grant dollars to systems serving 10,000 or fewer customers. The NYSDOH reports this data in NIMS on an annual basis. For NIMS Reporting Year 2015, the NYSDOH directed \$43,427,091 to projects serving 10,000 or fewer customers, exceeding the 15% requirement.

### **Davis-Bacon Requirement**

The NYSDOH reviews bid documents, construction contracts, and project financing agreements for compliance with EPA Davis-Bacon language and wage rates. Wage rates included in construction contracts are checked for correct dates. Project financing agreements are only signed if they contain a statement requiring Davis-Bacon compliance.

<sup>3</sup> As reported in PBR as of June 6, 2016.



Before the State disburses funds for incurred costs, assistance recipients must sign and attest a certificate of compliance with Davis-Bacon wage rate requirements. This includes the requirement that wage rate interviews are being conducted.

#### **American Iron and Steel Requirement**

All project finance agreements contain a provision requiring the use of “American Made Iron and Steel (AIS).” NYSEFC published guidance on AIS compliance which contained a contractual clause that must be included in every construction contract that is subject to the AIS requirement<sup>4</sup>. NYSEFC's guidance document states that the State will conduct occasional site inspections including a review of AIS documentation. Items that will be reviewed during these inspections include AIS certifications from vendors, suppliers, or manufacturers; contract and subcontracts to verify that the AIS contractual language has been included; and the lists of the incidental iron and steel project components that are claimed under the AIS de minimis waiver.

#### **DWSRF Withholding Determinations**

Both the Regional Capacity Development and Operator Certification Program are reviewed by Region 2's Drinking Water and Groundwater Protection Section. Letters were issued to the NYSDOH affirming that the state is implementing its capacity development and operator certification strategies and no withholding is necessary.

#### **DWSRF, PWSS and Enforcement Coordination**

New York State's DWSRF and PWSS programs coordinate and regularly interact at all levels as they are both implemented by the same office in the NYSDOH. This structure allows the NYSDOH to regularly coordinate with field offices to assist non-compliant systems with correcting violations and ensure that non-compliant systems are aware of the assistance that the DWSRF can provide. New York State has a small system technical assistance contract with New York Rural Water for circuit riders that provide on-site technical assistance throughout the state.

#### **Reporting**

All projects financed during FFY 2015 are entered into the Project Benefits Reporting (PBR) system. Typically staff at the NYSDOH will determine each Monday if any financing agreements were signed the week prior and will enter those projects into the database. A supervisor reviews all PBR data for accuracy, errors or omissions. This review process is continual. Under the requirements of the Federal Funding Accountability and Transparency Act (FFATA), the NYSDOH has entered data into [usaspending.gov](http://usaspending.gov) in an amount of the last three capitalization grants. The NYSDOH has been tracking FFATA reporting through the use of the PBR system.

*Appendix C contains FFATA Reporting for the FFY 2015, FFY 2014, and FFY 2013 Capitalization Grants as recorded in PBR.*

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<sup>4</sup> Available for review on [www.efc.ny.gov](http://www.efc.ny.gov).

## VI Sustainability and Climate Change Initiatives

### Sustainability

New York State maintains a commitment to the incorporation of sustainable infrastructure practices in both state revolving fund programs. The NYSDOH and NYSEFC encourage assistance recipients to submit Asset Management Plans along with engineering reports and plans and specifications. Assistance recipients that submit Asset Management Plans receive an additional five points on the project priority list. The NYSDOH may require applicants with systems that fail to meet technical, financial and managerial capacity requirements to submit asset management plans. Additionally, should a project be completed under budget, the NYSDOH encourages the remaining funds be used toward the development of an asset management plan.

Under the New York State Smart Growth Public Infrastructure Financing Act, two smart growth reviews are conducted by both the NYSDOH and NYSEFC. As part of these smart growth reviews, projects are evaluated to determine if green infrastructure and energy efficiency alternatives were considered or could be incorporated. The NYSDOH requires that assistance recipients identify in engineering reports, all energy efficiency, water efficiency, and environmentally innovative components. The NYSEFC is working with the New York State Energy Research and Development Authority (NYSERDA) to support energy and commodity recovery projects at wastewater and drinking water infrastructure projects.

For systems that fail to meet technical, financial, and managerial capacity requirements, the NYSDOH is continuing to promote interconnections and regionalization. For projects seeking assistance, if the potential for interconnections or regionalization exists whereby it would address the scope of the project within the framework of the priority ranking system, the engineering report must contain a detailed evaluation of that option and should include detailed justification if it is not pursued. Systems that fail to meet technical, financial, and managerial capacity requirements will not receive assistance unless it is with the purpose of meeting capacity requirements.

NYSEFC also conducts extensive reviews of DWSRF applicants' financial capacity prior to provision of financing. NYSEFC provides information to potential applicants regarding EPA training opportunities when information is available. The NYSDOH utilizes their set-aside programs to assist communities with capacity development activities. The NYSDOH also works with partner Federal agencies to encourage cofunding opportunities.

### Resiliency to Extreme Events and Climate Change

Projects that add resiliency to existing treatment works are eligible for DWSRF financial assistance. This includes planning, design, and construction of resilient measures at treatment works. The FY 2015 IUP states that projects' attributes for physical climate risk mitigation due to sea level rise, storm surges, flooding or any combination thereof will be considered when ranking projects. Project sponsors are required to demonstrate the risk mitigation potential of proposed projects to accrue these points.

New York State has plans in place for rebuilding water infrastructure after damage from an extreme event in ways that decrease vulnerability and increase resilience to future extremes. For the base program, New York State requires project sponsors to utilize the design elevations specified in Recommended Standards for Water Works, 2011 edition, which states that projects must be elevated to a minimum of three feet above 100-year flood levels. For the Storm Loan Mitigation Program (SMLP) the following table specifies the standards that are to be used:

Baseline Standard for SMLP Funds	Critical Equipment (Exposed to Sea Level Rise)	Critical Equipment (Not Exposed to Sea Level Rise)
100 year flood + 2 feet	100 year flood + 5 feet	100 year flood + 3 feet
Sandy high water + 1 foot	Sandy high water + 4 foot	Sandy high water + 2 foot
500 year flood	500 year flood	500 year flood

State executive order No. 24 set a goal to reduce New York State's greenhouse gas emissions to 80% of 1990 levels by 2050. This executive order also created the New York Climate Action Council (CAC). The CAC with assistance from NYSERDA and the NYSDEC issued the New York State Climate Action Plan Interim Report issued November 9, 2010. This report outlines climate change and adaptation practices that need to be incorporated in all sectors, including water and wastewater, to reach the 2050 50% reduction goal. New York State Public Health law is now requiring that all projects consider the best available current climate data before implementation.

The New York State Climate Action Plan Interim Report is available at <http://www.dec.ny.gov/energy/80930.html>.

## VII Financial Observations

### Assistance Terms

DWSRF assistance is designed to be flexible and maximize assistance provided while preserving the financial viability of the program. Terms of assistance are in compliance with SRF program requirements. For projects receiving long-term financing, subsidized interest and extended term financing are available for projects above the subsidized financing line on the IUP. Projects below the subsidized financing line receive bond market rate financing. For projects receiving short-term financing (3 years or time to readiness to receive long-term financing) projects above the subsidized financing line receive interest-free financing. Projects below the subsidized funding line receive market-rate financing. Principal repayments start within a year of project completion. Hardship financing is allocated based upon the Mean Household Income (MHI) of the municipality in which the project is located. To be evaluated to qualify for a grant, 2013 MHI must be less than or equal to the statewide MHI. To be eligible for grant assistance 2013 MHI must be less than 80% of the statewide MHI.

*Appendix D contains the New York State DWSRF Program Financing Options Matrix.*

### Use of Fees

New York State has established a fee structure to cover costs associated with program administration, bond issuance and transactions, council costs, financial advisory fees, printing costs, rating agency and trustee fees. A program administration fee of 1.1% of the project costs plus an annual fee of 0.11% of the outstanding principal balance of the financing are assessed to support the administration of the DWSRF program. The 1.1% program administration fee may be included as part of the financing. Non-hardship projects receiving short-term financing are charged an administrative fee equal to 0.6% of project costs. Fees accumulate in proportion to the amount of financing agreements signed thereby preventing large balances from accumulating. For NIMS reporting year 2015, the DWSRF collected \$369,441 from fees included in loans and \$1,245,337 from fees not included in loans. The DWSRF earned \$1,336 in interest from fee accounts.

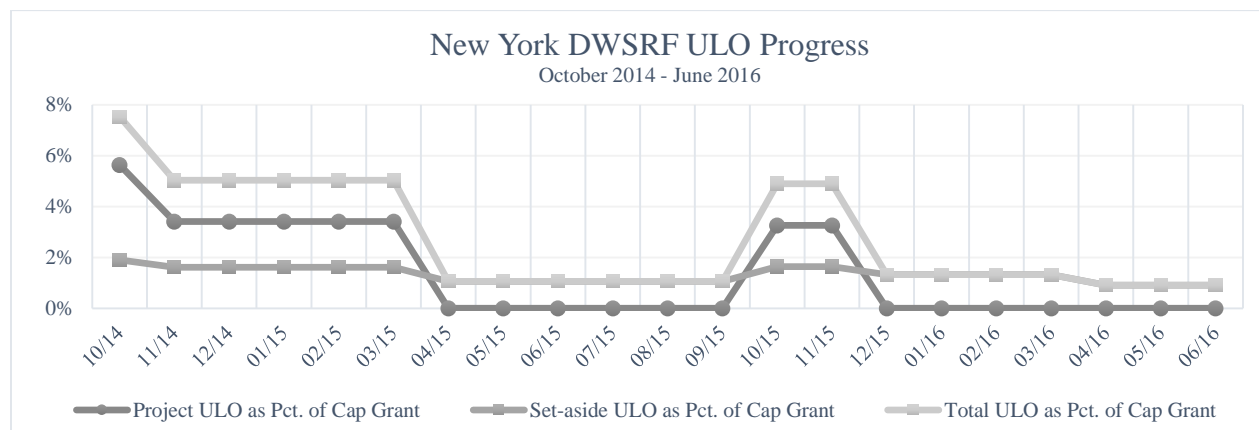
*Appendix E contains a tabulation of the New York State DWSRF Program fee structure.*

### State Match

The state is required to contribute a match equal to 20% of the grant amount. Additionally, the state is required to provide a 1:1 match for program management set-aside funds. For the 2015 DWSRF grant of \$42,176,000, NYSDOH contributed \$12,652,800 or 20% for the grant match requirement. NYSDOH provided \$4,217,000 as a 1:1 match to the DWSRF grant for program management. The source of match funding is New York State's Environmental Bond Act. This state match structure was approved by headquarters at the time the Operating Agreement was signed. For each year, the required state match dollars were deposited into the DWSRF and disbursed as required. NYSEFC made available accounting records to demonstrate this.

### Timely and Expeditious Use of Funds and Unliquidated Obligations

The overall DWSRF fund currently has unliquidated obligations (ULOs) of \$9,918,994 (0.91% of total awarded funds) as of the issuance of this report. This is extremely commendable. The graph below shows ULO progress for the DWSRF program from October 1, 2014:



## **Financial Management**

NYSEFC consistently evaluates how eligible assistance recipients make use of the program, and examines unmet infrastructure needs. Should demand be higher than available funds, NYSEFC increases the pace at which access to the capital markets is available. Long-term financial goals are to keep the program viable and in sound financial health. Short-term goals include meeting program requirements. This is a dynamic process and it is updated and evaluated continually. NYSEFC uses financial modelling to direct program management. A liquidity model is used to track sources of funding and availability of funds that incorporates real-time data to reflect sources and uses of funds. Long-term models forecast capital market activity and is used to make projections of state lending capability. Bonds are issued in various formats. Leveraging is done 2-4 times per year.

NYSEFC has a team in house that services the loans and attributes the performance of the loan portfolio to that group of employees which monitor the repayments of clients, and to the extent possible, communicates responsibilities to assistance recipients. From time to time, requests for restructuring are received. These are rare and this is due to good up-front communication with clients in regards to expectations of NYSEFC. A "watch list" is maintained for delinquent clients. Clients with an inability to make repayments are considered for refinancing under hardship programs.

## **Compliance with Audit Requirements**

Annual independent audits (combined audited financial statements and Single Audit) are carried out each year by KPMG, which examine CWSRF and DWSRF program finances in great detail. Audited basic financial statements and the A-133 audit for the years ending March 31, 2014 and March 31, 2015 were issued on June 25, 2015. No deficiencies were found. The DWSRF program's financial operations conform to Generally Accepted Accounting Procedures (GAAP).

As required under Single Audit Act regulations, for equivalency projects, assistance recipients that expend \$750,000 or more of Federal funds in a fiscal year are required to submit Single Audit Act Audit Reports. New York State reviews these reports. Recipients of financing for equivalency projects are informed of Single Audit requirements in the Project Financing Agreement.

## **Cash Draws and Transaction Testing**

NYSEFC maintains control of the cash draw process and maintains a thorough process for reviewing and collecting all invoices. The state corrects all improper payments that are detected. Automated Standard Application for Payments Draw Records and supporting documentation demonstrate full compliance with activity coding and proportionality requirements as set forth by grant conditions. NYSEFC receives disbursement requests and recertifies that they are meeting all terms of assistance agreements. Cost documentation is included in the disbursement request. Documentation is reviewed to determine the eligibility and completeness of the disbursement request. New York funds all program disbursements with recycled funds first, and then batches these disbursements and makes cash draws only a few times per year at the correct ratio of 80.77% Federal and 19.23% State.

Transaction testing was conducted by EPA Region 2's financial analyst at the NYSEFC office on June 7, 2016. In keeping with normal operations, New York State disburses its funds to assistance recipients and subsequently reimburses itself via outlays. 13 cash transactions were reviewed with an invoiced total of \$3,203,578.25. Of this amount \$242,418.07 were administrative cash transactions and \$2,961,160.18 were project cash transactions. Transaction testing determined that New York State reviews invoices and approves disbursements in a proper manner. New York State used the correct proportionality ratio to calculate drawdown for both project and administrative disbursements. None of the reviewed cash transactions were identified as improper and all disbursements were for eligible costs.

*Appendix F contains the New York State DWSRF Program FY 2015 Transaction Testing Summary Table.*

## **Assessment of Financial Capability and Loan Security**

Each assistance recipient must complete a questionnaire documenting financial circumstances as part of the financial capability evaluation process. Additionally, the State Controller's office compiles and publishes financial health and credit data for all municipalities in New York State. The NYEFC also accesses public domain financial information and compiles a report. A financial analyst examines this all sources of data and follow up information is obtained from the assistance recipient. All data sources are used by the NYSEFC to evaluate terms of assistance for each assistance recipient. All assistance recipients have their taxing authority and credit evaluated by NYSEFC, thereby assuring a dedicated source of revenue for repayment. Assistance recipients always have access to additional funding in the form of "phased points" for projects that are still incomplete.

New York State's DWSRF program has procedures in place for assessing the technical, financial and managerial (TFM) capacity of their assistance recipients. The NYSDOH both collects TFM capacity evaluation forms and conducts outreach programs including the Operator Certification Program to ensure technical and managerial capacity. Projects submitted by systems that lack technical, managerial or financial capacity or are classified as priority systems based on EPA's Enforcement Targeting Tool (ETT) are not eligible for funding unless the proposed project will ensure capacity or compliance.

### Financial Risks

It is the opinion of the NYSDOH that Federal budget cuts present the largest challenge to the long-term viability of the program. Loss of set-aside funds present a challenge to sustained operation of program. The NYSDOH also expresses concern that additional subsidization requirements reduce the amount of cash that flows back into the program from assistance recipients.

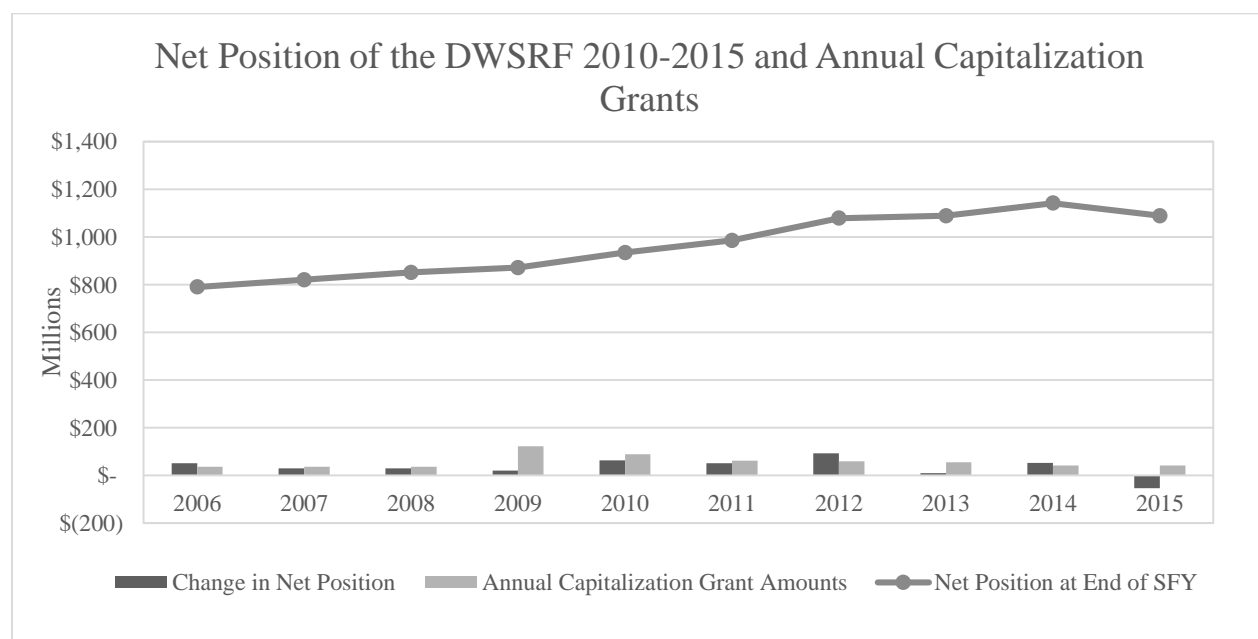
## VIII Financial Performance of the DWSRF Program

### Health of the Fund

A healthy, financial viable DWSRF program can provide a high volume of financial assistance during each fiscal year while maintaining the ability to fund projects in perpetuity. The available audited financial statements show that the NYSDOH and the NYSEFC are effective managing partners of the DWSRF and are working to establish a program that is sustainable and effective. As of the time of this report, New York has no defaults and all borrowing entities have been evaluated for their financial solvency in accepting DWSRF financing.

As of June 1, 2016, New York's DWSRF program has executed a cumulative \$3,765,867,985 in assistance to finance drinking water projects. NYSDOH maintains adequate controls over the loan execution and collections process. The program's total assets (current and noncurrent) at the beginning of SFY 2015 were equal to \$2,127,141,925. Total assets increased 0.8% to \$2,145,743,071 by the end of SFY 2015.

New York's DWSRF fund has exhibited steady growth over the past years but has decreased in the past year. Net position at the end of SFY 2015 was \$1,089,547,764. This is 4.6% less than net position at the beginning of SFY 2014, \$1,142,197,943. The chart below shows net position over time as a line graph and the annual capitalization grant amounts and change in net assets as column graphs:



A large percentage of the growth New York attained in the years above was due to the capitalization grants and annual state match contributions. In most cases, the change in net position has been less than the amount of the annual capitalization grant. This indicates that the program disburses a sizable amount of assistance each year.

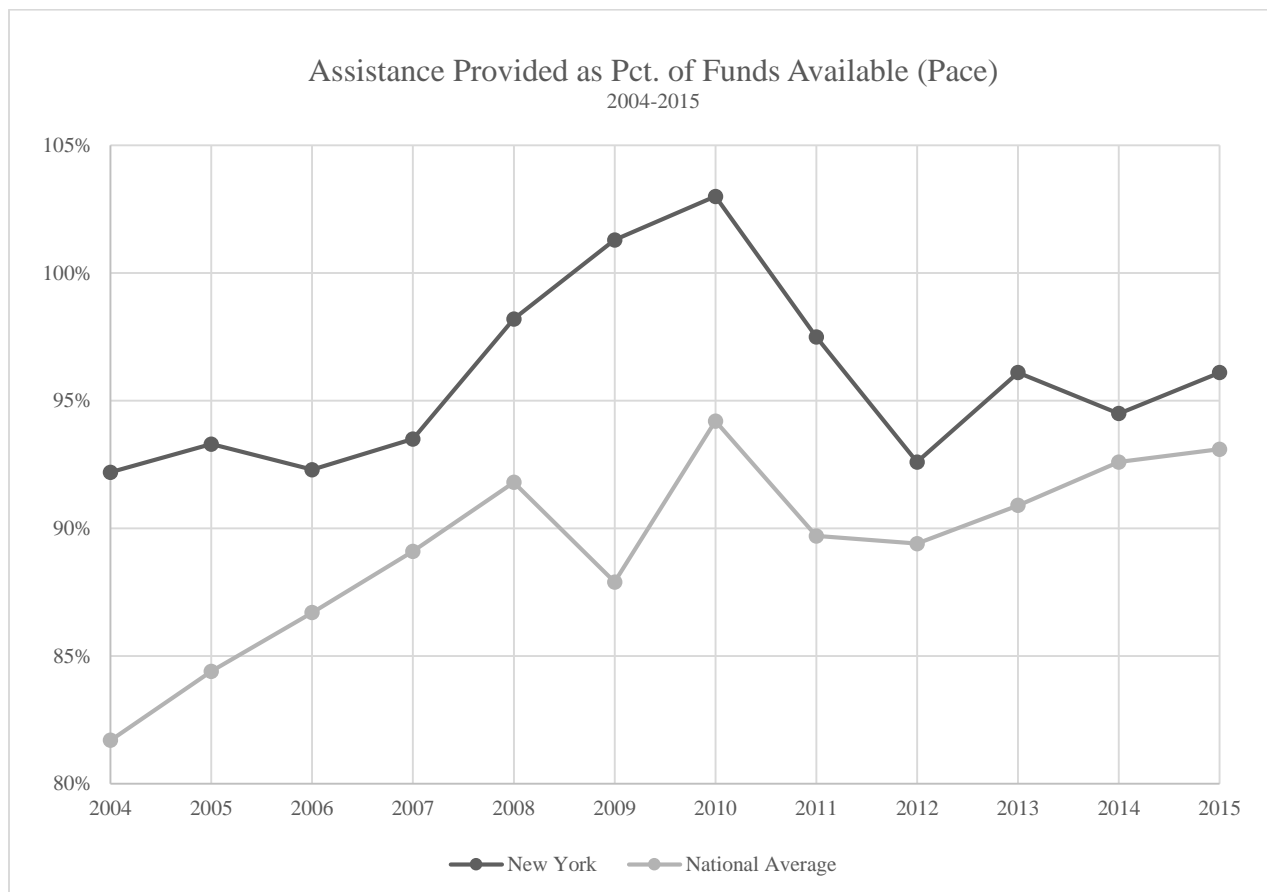
### DWSRF Financial Indicators

Financial indicators serve to gage the effectiveness of NYSDOH and NYSEFC's management of the DWSRF program. The following table shows selected financial indicators for New York State's DWSRF program for NIMS reporting years 2013-2015. It also shows how these numbers compare with 2015 National NIMS data:

New York State DWSRF Program Financial Indicators NIMS Reporting Year 2015				
Financial Indicator	2013	2014	2015	2015 National
Program Pace (Assistance as a % of Available Funds)	96.1%	94.5%	96.1%	93.1%
Return on Federal Investment	412.8%	405.9%	382.6%	176.6%
Disbursements as a % of Assistance	98.2%	97.8%	92.4%	86.2%
Net Return after Forgiving Principal (Excluding Subsidy)	\$378,856,700	\$414,492,168	\$461,117,313	\$1,696,111,482
Net Return on Contributed Capital (Excluding Subsidy)	47.4%	51.1%	53.5%	11.6%

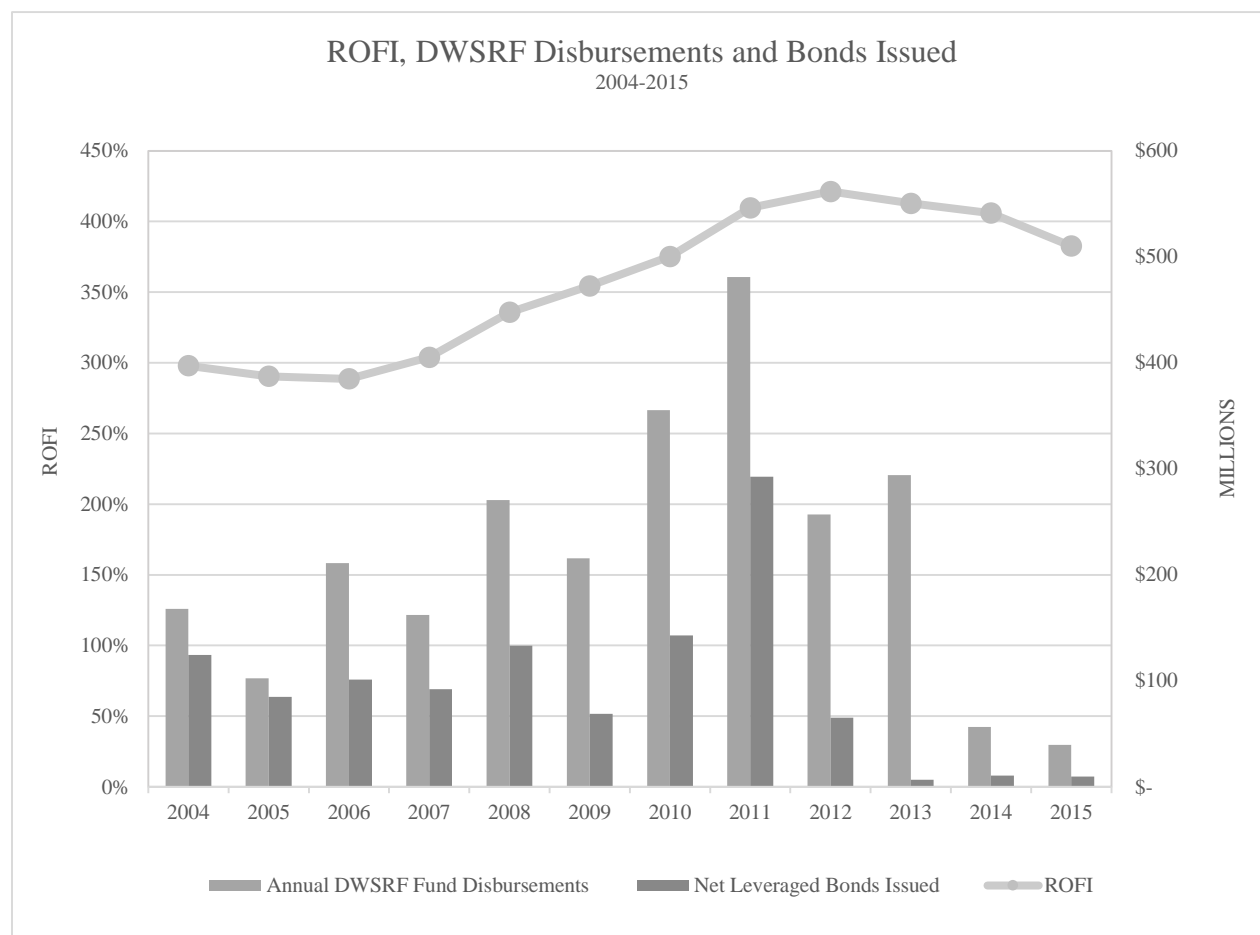
### Pace of the DWSRF Program

Pace has been flat since 2013 at 96.1%, which is higher than the national average for NIMS reporting year 2015 of 93.1%.



### Return on Federal Investment (ROFI)

ROFI is the amount of assistance the state has provided for each federal dollar of capitalization grant received by the state. New York State has an aggressive leveraging program which allows them to provide a greater amount of assistance per dollar of Federal Capitalization Grant. New York's 2015 ROFI was 382.6%, substantially above the national average<sup>5</sup> of 176.6%:



### Disbursements as a Percentage of Assistance Provided

This indicator describes how quickly funds are disbursed for executed loan agreements and is equal to cumulative loan disbursements divided by cumulative assistance provided. The state, at 92.4% is above the 2015 national average for the states (86.2%). New York State is making a very successful concerted effort to spend down funds and reduce ULOs.

### Net Return after Forgiving Principal (Excluding Subsidy)

This indicator represents how well the DWSRF is maintaining invested or contributed capital. It is equal to the DWSRF program's net earnings after loan principal has been forgiven. If this number is positive it means the DWSRF is accumulating funds. For the last three years, net return has remained high showing that the fund is maintaining invested capital effectively.

### Net Return on Contributed Capital

This indicator more fully describes the concept of "Net Return" as it shows the percentage of contributed capital that returns to the DWSRF funds. For 2015, New York had a net return on contributed capital of 53.5%, which greatly exceeds the national average for all states (11.6%).

<sup>5</sup> Includes non-leveraging states.

## IX Set-Aside Observations

### General Set-Aside Funding

The NYSDOH submits a workplan every year outlining its ongoing set-aside activities, the amounts reserved to fund them and the goals of the set-aside programs. NYSDOH routinely creates workplans of high-quality. These workplans are submitted on-time and contain all the necessary elements. Workplan goals are coordinated with the State's public drinking water program. No changes in the activities performed have occurred thereby making amendments unnecessary. The NYSDOH documents its activities in set-aside activity reports, titled "Performance Status Reports" (PSRs). These correspond to the set-aside workplans that are submitted annually. The PSRs identify success measures for each project and indicate progress towards milestones. Overall the PSRs indicate that the state has achieved all goals in its set aside workplans, although it has been unable to complete any Comprehensive Performance Evaluations (CPEs) due to travel restrictions.

### General Account Management

New York State maintains separate accounts for set aside funds. These accounts are subject to the same level of oversight as the larger DWSRF fund. The State does not make any loans under section 1452(k)(1)(C) of the SDWA as New York State has not elected to utilize the 15% Local Assistance and Other Programs set-aside.

### Specific Set-Aside Requirements

Set-aside equipment and salaries are proportionately funded. The proportion charged to set-asides is documented by employee timesheets. Additionally, along with the application, the NYSDOH submits detailed budget tables which include backup documents that itemize set-aside budget items. Transaction testing and conversations with DWSRF program management has confirmed that set-aside funds are only used for eligible purposes. The 1:1 state match for the PWSS program is made each year and is funded through in-kind services.

## X Project File Review

As per the final FFY 2015 SRF Procedures and Attachments, the Regions are required to conduct one onsite review during each FFY. During these reviews, two Base program project files are reviewed. The following table contains project information for the two projects that were examined during this onsite review:

Project Name	Project Number	Agreement Executed	Total SRF Assistance	Additional Subsidization	Interest Rate	Loan Term
Pawling (V)	#16714	7/23/2015	\$2,847,610	\$0	0.33%	3 yrs
Red Hook (V)	#18140	1/8/2015	\$3,800,000	\$0	0.34%	3 yrs

NYSDOH has exhibited good file management and organization. Electronic copies of various project file documents were forwarded to Region 2 staff for review prior to the site visit. Region 2 acknowledges the work and effort expended on the part of NYSDOH to present their project files in a way that is conducive to a smooth project file review process. The following is a summary of findings:

### Project Descriptions

Both projects were eligible for DWSRF funding. The project descriptions below are based on those in the Project Benefits Reporting System (PBR):

*Pawling (V): This action is for the short term financing in the amount of \$2,847,610. The project involves the installation of a microfiltration treatment system to treat surface water from the Upper and Lower Pawling Reservoir. The project also involves the decommissioning the Libby Lane wells, one of which has excessive radiological contamination. The Village of Pawling has experienced declining yields from groundwater wells and the presence of radium in one of the most productive wells. Currently, the Village is not able to meet the maximum day demand with the largest producing well out of service. Radiological contamination in excess of the maximum contaminant level (MCL) has been observed in Libby Lane Well #2. As a result, the Libby Lane wells are not in use, which has contributed to the Village's difficulties in meeting the maximum daily water demands with the best well out of service. To augment the declining water supply, the Village proposes to construct a water treatment plant to treat water from the Village's reservoir (Pawling "Upper" and "Lower" Reservoirs), which was at one time the sole water supply for the Village.*



*Red Hook (T): This project includes the replacement of an existing 225,000 gallon elevated finished water storage tank with a new storage tank, as well as distribution system upgrades, including replacement of some of the Village's water mains and associated appurtenances. All proposed work will benefit Village users, and will be conducted within the Village boundary. The Village of Red Hook water system has been in operation since the late 1800's and the primary water mains and storage tank have been in service since the 1930's. The existing 225,000 gallon elevated finished water storage tank is in need of costly repairs. It was decided that replacing the existing tank was a better financial decision. Distribution system upgrades will ensure that system pressures are maintained in accordance with design standards under all conditions of flow; including fire flow demands.*

#### **Project File Observations**

Project Name	Deficiency in File
Pawling (V)	<ul style="list-style-type: none"> <li>No deficiencies identified.</li> </ul>
Red Hook (T)	<ul style="list-style-type: none"> <li>No documentation of AIS DeMinimis waiver on file.</li> </ul>

## **XI Required Actions**

- New York State will work with EPA Region 2 to update the Operating Agreement.
- Where possible, AIS De Minimis waivers will be included in project files.

## **XII Conclusion**

Based on the documents that were reviewed, the New York State DWSRF program is in sound financial health, well managed, and responsive to new initiatives. EPA Region 2 commends the New York State Department of Health and the New York State Environmental Facilities Corporation for working together to effectively implement an excellent and high-performing DWSRF program focused on protecting human health. The success of New York State's DWSRF program is expected to continue into the next fiscal year.

## **XIII Compliance with SRF Annual Review Guidance Certification**

EPA Region 2 has conducted an annual review of New York State's DWSRF Program for FFY 2015 in accordance with EPA's SRF Annual Review Guidance.